IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1228 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
PATEL MANILAL UMEDBHAI & 3 - Defendant(s)

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Appearance :
MS HANSA PUNANI A.G.P. for Appellant(s) : 1,
MR AP MEDH for Defendant(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 04/09/2006

ORAL JUDGMENT

1. The State of Gujarat has preferred this appeal to challenge the judgment and award made by the Motor Accident Claims Tribunal [Main], Banaskantha at Palanpur [hereinafter referred to as “the Tribunal”], in Motor

Accident Claim Petition No. 137 of 1981. The Tribunal has awarded a sum of Rs.66,000=00 together with proportionate costs and interest at the rate of 6% per annum, from the date of application till the date of realization to respondent no. 1.

2. The facts in short giving rise to the present proceedings can be stated as under.

2.1. Respondent no. 1 was travelling in a jeep car bearing registration No. GJP 4741, while on duty on 2nd July, 1980. At the relevant time, he was in the employment of the Government. He was attached to respondents no. 2 and 3 who were working as Executive Engineer with Water Irrigation Branch at Palanpur. It is his say that the driver of the vehicle drove the vehicle at excessive speed and in rash and negligent manner and as a result of such driving the vehicle met with an accident because on curvature he took sharp turn whereby, the vehicle left the road and landed in drainage. As a result of the same, one person lost his life, whereas, respondent no. 1 suffered injuries. He was hospitalized for a considerable period for treatment. He, therefore, preferred the aforesaid Motor Accident Claim Petition before the concerned Tribunal for claiming compensation

of sum of Rs. 1 lakh. The Tribunal on the basis of the evidence, oral as well as documentary produced before it, arrived at the conclusion that the accident had occurred on account of negligence of driver of the vehicle and since respondent no. 1 had received injuries, while he was travelling in the vehicle, during the course of the duty, the present appellant was liable to compensate for the injuries sustained by him. The Tribunal also determined the compensation at Rs.66,000=00. Hence, the State has now preferred this Appeal.

3. I have perused the record of this appeal and in particular the evidence as well as the judgment of the Tribunal. It is stated by the respondent that on the date of the incident, he was serving as Assistant Engineer, drawing salary of Rs.980=00 per month. It is his say that while they were returning from Palanpur after discharging their official duty and the vehicle in which they were travelling, turned turtle on account of rash and negligent driving of the driver. As a result of the same, he sustained fracture in one leg and serious injuries to the other. It is stated by him that he was admitted in the Civil Hospital on the same day and on the next date i.e., on 3rd July, 1980 he regained consciousness. He remained as indoor patient till 18th December, 1980.

Thrice he had to be operated upon and the steel plate was inserted in his leg. According to him, he had incurred expenses of Rs.7,000=00 to Rs.8,000=00 for medicines and for special diet. He has also stated that because he had not fully recovered from the injury till 11th February, 1982, he could not resume the duty. He has stated that on account of the injuries, he has to limp while walking and he is not able to squat or sit on the ground. This version has not been effectively cross-examined by the other side.

3.1. The driver of the vehicle Akbarkhan Hamidkhan Pathan has also been examined as witness by the present appellant. According to him, he was driving the vehicle at moderate speed on the date of the accident, but the accident happened because of abrupt puncture of tyre the vehicle left the road and turned turtle. It is stated by him that the accident had occurred not on account of any negligent or rash driving by him. However, in the cross-examination he has stated that new tyres could be bought by the Executive Engineer, if he was told that the tyres of the vehicle had worn out and they were required to be discarded. No other witness has been examined by the appellant. The Tribunal on the basis of the aforesaid evidence has accepted the say of respondent no. 1 that

the accident took place solely on account of rash and negligent driving of the driver of the vehicle. The Tribunal has thereafter, appreciated the evidence with a view to assess just compensation which could be awarded to respondent no. 1. As stated above, respondent no. 1 claimed Rs. 1 lakh by way of compensation. However, the Tribunal has awarded Rs.66,000=00 by determining various amounts under different heads. It has not accepted the claim of respondent no. 1 to the effect that Rs.7,000=00 to Rs.8,000=00 were spent by him for medicines and special diet, but in his opinion, he could be awarded Rs.500=00 for medicines and transportation. It is true that respondent no. 1 has not submitted or produced any bills for expenses of medicines etc. However, considering the long duration of hospitalization and the treatment given to him, the award of Rs.500=00 under the said head is much on lower side. It appears that respondent no. 1 had preferred appeal before this Court, but same has been already disposed of in the year 1996. In view of the same, there is no scope for this Court now to enhance at least the compensation under that head. The Tribunal has thereafter, awarded Rs.19,000=00 towards the loss of earning and Rs.15,000=00 for pain, shock and suffering. I have clearly perused the discussion thereof and in my opinion, the same is not required to be

disturbed. The permanent disability has been assessed at 17 ½% and on the basis of the same, the future loss of income is assessed at Rs.31,500=00, which also in my opinion, is just and proper, considering the circumstances on record. In view of the aforesaid, the overall compensation awarded to respondent no. 1 by the Tribunal is not only just and proper, but on the contrary, it is slightly on lower side. Hence, there is no reason for me to interfere with the judgment and award and the present appeal is required to be dismissed. Hence, the appeal is dismissed with no order as to costs.

[Akshay H. Mehta, J.]

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